

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-128902-06

Date: AUGUST 23, 2006

Re:

Legend

Decedent =

Spouse =

Son =

Daughter =

Trust =

Foundation =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

X =

Y =

Z =

State =

State Statute =

Dear :

This is in response to your letter from your authorized representative dated June 2, 2006, in which you request rulings under § 2518 and § 2055 of the Internal Revenue Code.

Facts

The information submitted and the representations made are summarized as follows. Decedent, a resident of State, died testate on Date 1. Decedent was survived by Spouse, Son, and Daughter. In accordance with Paragraph (A) of Article NINTH of

Decedent's Will executed on Date 2, Daughter and Son were appointed as co-executors of Decedent's estate. Article FIFTH of Decedent's Will provides that the residue of Decedent's estate is to pass to Trust, a revocable trust created by Decedent during his life.

Paragraph (B) of Article SECOND of Trust provides:

The Trustees shall pay over and distribute the sum of [x] Dollars for any purpose or purposes, in any amounts, shares or proportions and on such terms, trusts and conditions to or for the use and benefit of any one or more person(s) as the Grantor's daughter, [Daughter], in her sole and absolute discretion, shall appoint, other than (i) [Daughter], [Daughter's] estate, [Daughter's] creditors, or the creditors of [Daughter's] estate, (ii) any issue of the Grantor, the estate of any such issue, the creditors of any such issue, or the creditors of the estate of any such issue, and (iii) any person related to the Grantor by blood or by marriage at any time, such persons estate, such person's creditors, or the creditors of such person's estate. ... If, or to the extent that [Daughter] shall fail to validly appoint all or any portion of such [x] Dollars within one (1) year of the date of my death (hereinafter the "Unappointed Property"), the Trustees shall pay over and distribute the Unappointed property to [Foundation] (or any successor thereto); provided, that if [Foundation] is then no longer in existence or no longer a 'qualified charitable organization' as defined in Paragraph D of this Article SECOND, then the Trustees shall pay over and distribute the Unappointed Property to such one or more qualified charitable organizations in such shares and in such proportions as the Trustees, in their sole and absolute discretion, shall determine.

Paragraphs (A) and (C) of Article SECOND of Trust direct that the sum of [y] dollars be retained in further trust for the benefit of Decedent's sister and nephew and that an amount equal to Decedent's available generation-skipping transfer tax exemption be retained in further trust for the benefit of Decedent's grandchildren.

Paragraph (D) of Article SECOND of Trust provides that that the balance of the property held in Trust is to be paid to Foundation, if Foundation is a qualified charitable organization. If Foundation is no longer in existence or no longer a qualified charitable organization, such property is to be distributed to such one or more qualified charitable organizations in such shares and in such proportions as the Trustees, in their sole and absolute discretion, determine. The term "qualified charitable organization" is defined as an organization described in § 2055(a)(2).

Pursuant to Paragraph (A) of Article NINTH of Trust, upon Decedent's death, Daughter and Son are named as Trustees of Trust. Article TWENTY-FOURTH provides that Trust is governed by the laws of State.

Foundation was created under an Agreement of Trust ("Agreement") dated Date 3, and is governed by the laws of State. Foundation has received a letter from the Internal Revenue Service concluding that Foundation is an organization that is exempt from federal income tax under § 501(c)(3). Article II of Agreement provides that, upon Decedent's failure or cessation to act as Trustee, Daughter is named as Trustee of Foundation, and provides Daughter with authority to appoint an additional trustee. Article V provides that Daughter may amend Agreement, provided that no amendment disqualifies Foundation from exemption from federal income tax under § 501(a).

Daughter proposes to disclaim all of her right, title and interest in and to her special power to appoint Dollars under Paragraph (B) of Article SECOND of Trust. Prior to the execution of the disclaimer, Daughter will not to any extent exercise the special power of appointment. Pursuant to State law, the proposed disclaimer will be made in writing and will be delivered to the Executors of Decedent's estate no later than Date 4, which date is nine months after the date of Decedent's death. Daughter has not received and is not to receive any consideration in money or money's worth for such disclaimer from Foundation or any other person.

Prior to the time that Daughter executes the proposed disclaimer, Daughter also proposes to amend Agreement, the governing document of Foundation, so that Daughter will have no rights or powers with respect to the disposition of the property passing from Trust to Foundation as a result of the proposed disclaimer. Agreement, as amended, will provide that if, at any time, property becomes distributable to Foundation as a result of a qualified disclaimer by Daughter, the Trustee other than Daughter, is directed to appoint an individual as Special Trustee (who may appoint additional Special Trustees), provided that none of Daughter, any other issue of Decedent, the spouse of any issue of Decedent and any entity in which Daughter has an interest or serves as an officer, director or employee may serve as a Special Trustee. Any property received by Foundation as a result of a qualified disclaimer by Daughter will be held in a segregated account, the Special Account, that is separate and apart from any other property of Foundation. The right to distribute income and/or principal of the Special Account and to select recipients of such distributions will be held exclusively by the Special Trustees. At Daughter's death, the Special Account will be merged with other Foundation property, and all rights, powers and duties of the Special Trustees will terminate.

After Foundation's Agreement is amended, Daughter will appoint a Co-Trustee of Foundation, so that the Co-Trustee may appoint the Special Trustee to implement and administer the Special Account.

Under State Statute, any beneficiary of a "disposition" may renounce all or part of such beneficiary's interest, provided that the renunciation (i) is in writing and signed and acknowledged by the person renouncing; (ii) is filed in the office of the clerk of the court having jurisdiction over the will or trust agreement governing the property of which the disposition would otherwise be made, within nine months after the effective date of the

disposition, (iii) is accompanied by an affidavit of the renouncing party that the renouncing party has not received and is not to receive any consideration in money or money's worth for such renunciation from a person or persons whose interest is to be accelerated, unless such payment is authorized by the court. Notice of such renunciation, including a copy of the renunciation, must be served personally or in such manner as the court may direct upon the fiduciary directed in the will or trust agreement to make the disposition, and by mail or in such manner as the court may direct upon all persons whose interest may be created or increased by reason of such renunciation. Unless the creator of the disposition has provided otherwise, the filing of a renunciation has the same effect with respect to the renounced interest as though the renouncing person had predeceased the creator or the decedent.

State Statute provides that the term "disposition" includes the granting of a power of appointment. The effective date of a disposition created by a revocable trust agreement is the date on which the trust agreement becomes irrevocable.

You have requested the following rulings:

1. The proposed disclaimer by Daughter will constitute a qualified disclaimer within the meaning of § 2518 if the proposed changes to Foundation's governing instrument are made before Daughter executes the disclaimer.

2. Assuming that the disclaimer, as proposed, is a qualified disclaimer under § 2518 and the Foundation is a qualified charitable organization under § 501(c)(3) to which bequests are deductible under § 2055, the property passing to Foundation by reason of Daughter's proposed disclaimer will be eligible for the federal estate tax charitable deduction under § 2055.

Law and Analysis

Issue 1

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the federal estate, gift, and generation-skipping transfer tax provisions will apply to that interest as if it had never been transferred to such person.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, provided: (1) such

refusal is in writing; (2) the disclaimer is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of (A) the date on which the transfer creating the interest in such person is made, or (B) the day on which such person attains age twenty-one; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either (A) to the spouse of the decedent, or (B) to a person other than the person making the disclaimer.

Section 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of § 2518(b) shall be treated as a qualified disclaimer of such portion of the interest.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Thus, the disclaimant is not treated as making a gift.

Section 25.2518-2(d)(2) provides, in pertinent part, that if a beneficiary who disclaims an interest in property is also a fiduciary, the disclaimant cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Under § 25.2518-2(e), in general, a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant. The disclaimer will not be qualified if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person) unless such power is limited by an ascertainable standard.

Section 25.2518-3(a)(1)(i) provides that if the requirements of the section are satisfied, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer, even if the disclaimant has another interest in the same property. Section 25.2518-3(a)(1)(iii) provides that a power of appointment with respect to property is treated as a separate interest in such property and such power of

appointment with respect to all or an undivided portion of such property may be disclaimed independently from any other interests separately created by the transferor in the property. Further, a disclaimer of a power of appointment with respect to property is a qualified disclaimer only if any right to direct the beneficial enjoyment of the property which is retained by the disclaimant is limited by an ascertainable standard.

Section 25.2518-3(b) provides that the disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under § 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property. See § 25.2518-3(d), Example 20, regarding the disclaimer of a fractional share of a residuary bequest.

Section 25.2581-3(c) provides that the disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift can be a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Following the disclaimer, the amount disclaimed and any income attributable to that amount must be segregated based on the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of the value changes that may have occurred between the date of transfer and the date of the disclaimer.

In Rev. Rul. 72-552, 1972-2 C.B. 525, the decedent, who was the president and a director of a corporation organized under § 501(c)(3), transferred property to the corporation. In his capacity as president and a director, the decedent, in conjunction with the other directors of the corporation, had the power to direct the disposition of the corporation's funds for charitable purposes. The ruling holds that, because the decedent retained the right, in conjunction with others, to designate the entities that would possess or enjoy the property transferred to the corporation, the property transferred by the decedent to the corporation was included in the decedent's gross estate at his death under § 2036.

In the present case, Daughter proposes to disclaim her special power to appoint a pecuniary portion of the property subject to her power. Under the terms of Paragraph (B) of Article SECOND of Trust, the property subject to the power that, as a result of the disclaimer is not appointed, will pass to Foundation. Pursuant to the terms of the proposed amendments to Agreement, during Daughter's life, the property passing to Foundation as a result of the disclaimer will be held in a segregated Special Account, separate and apart from the other Foundation assets. The power to make distributions

of income and/or principal from the Special Account and to select the recipients of such distributions will be held exclusively by the Special Trustee(s). Daughter is precluded from serving as a Special Trustee and will have no power to appoint or remove any Special Trustee.

Therefore, we conclude that the proposed disclaimer will constitute a qualified disclaimer under § 2518 provided the disclaimer otherwise complies with the requirements of § 2518 and the applicable regulations including § 25.2518-3(c) and provided the Agreement that governs Foundation is amended as proposed and the terms, as amended, are effective under State law.

Issue 2

Under § 2055(a)(2), for estate tax purposes, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. A corporation that qualifies under § 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 20.2055-2(c)(1)(i) of the Estate Tax Regulations states that in the case of a bequest, devise, or transfer made by a decedent dying after December 31, 1976, the amount of a bequest, devise, or transfer for which a deduction is allowable under § 2055 includes an interest which falls into the bequest, devise, or transfer as the result of a qualified disclaimer under § 2518.

Under the terms of Trust, property that is not appointed by Daughter as a result of the disclaimer will pass to Foundation, provided Foundation is a qualified charitable organization. Foundation has received a letter from the Internal Revenue Service concluding that Foundation is an organization described in § 501(c)(3). Accordingly, based on the facts presented and the representations noted above, the property that passes to Foundation as a result of Daughter's disclaimer that will be segregated in the Special Account will qualify for an estate tax charitable deduction under § 2055, provided that Daughter's disclaimer is a qualified disclaimer under § 2518, Agreement is amended as proposed and the terms, as amended, are effective under State law.

The rulings contained in this letter are based upon information submitted and representations made by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes
Copy of this letter

cc: